IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24756 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHINDER R RAMCHANDANI
Versus
THE CHIEF CONTROLLING AUTHORITY AND OTHERS

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Appearance :
MR NV ANJARIA for Petitioner.
MS NISHA PARIKH, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 26/09/2007

ORAL JUDGMENT

1. Rule. Learned AGP, Ms.Nisha Parikh waived service, and consented to hearing and final disposal of the matter today.

2. Invoking Article 226 of the Constitution, the petitioner has approached this Court to challenge communication dated 16-10-2006 and order dated 22-1-2007, whereby application dated 12-6-2002 of the

petitioner under the provisions of Section 53 of the Bombay Stamp Act, 1958 (for short “the Act”) was rejected on the ground of delay and papers thereof were returned by the Superintendent of Stamps to the Deputy Collector. The petitioner has made further prayer for a direction to draw statement of the case to be referred to respondent No.2 under the provisions of Section 32 B of the Act, even as that provision is deleted with effect from 1st April 2007.

3. The facts of the case and approach of the Government clearly show a pathetic state of affairs in which even the officers of very high rank, dealing in public revenue directly affecting the public exchequer, choose to remain ignorant and indolent and make orders without minimal application of mind. The simple facts of the case are that the petitioner purchased a plot of land on 29-6-2000 for the stated consideration of Rs.4,90,000/- and the Deed of Transfer was registered at No.3056 with the office of Sub-registrar, Gandhidham, Kachchh. Respondent no.2 herein issued notice under Rule 4 (2) of the Bombay Stamp (Determination of Market Price) Rules, 1984 on 21st December 2000 and thereafter, an order under Section 32 A of the Act to deposit deficit amount of duty amounting to Rs.3,59,086/- was made. That order is stated to have been served personally upon the petitioner on 24th April 2002 and time granted therein to pay was 90 days.

4. Being aggrieved, the petitioner made an application directly to Chief Controlling Revenue Authority invoking the provisions of Section 53 of the Act and paid 25% of deficit stamp duty by a challan on 26-04-2002. 54 months thereafter, the Deputy Superintendent of Stamps returned the application of the petitioner to the Deputy Collector stating that the petitioner's application under Section 32 B was presented beyond the period of limitation and, on that basis, the Deputy Collector

informed the petitioner, by the impugned order, bearing two dates, viz 15-11-2006 and 22-1-2007, that his application dated 12-6-2002 was filed on account of delay beyond the period of 90 days prescribed under Section 32 B of the Act.

5. It is absolutely clear from the above record of facts that the petitioner's application invoking the provisions of Section 53 and addressed directly to the Chief Controlling Revenue Authority, after payment of requisite amount of 25% of deficit, was never entertained by that authority, but a lower authority, i.e. the Deputy Superintendent of Stamps had, without any application of mind or probably even without reading the application, rejected it only on the ground of delay, as though it were an application under Section 32 B. Neither the Deputy Superintendent of Stamps nor the Deputy Collector concerned of the Stamp Duty Valuation Organization looked at the date of the instrument in question or the date of the order under Section 32 A to find out what was the prescribed period of limitation at the relevant time. And the whole process of issuing orders without any application of mind on a printed format took the authorities more than 60 months. Similar orders with similar delays are noticed in hundreds of cases which end up in the Court.

6. Having regard to the peculiar facts and circumstances, without prejudice to the rights and contentions of the parties and in view of deletion of Section 32 B, learned AGP requested the Court to remand the application dated 12-6-2002 to the Chief Controlling Revenue Authority for its consideration in accordance with law. It was argued on behalf of the petitioner that period of limitation in cases where quasi-judicial proceedings are held by administrative authority should be liberally interpreted and applied and, as held by the Supreme Court in **Raja**

Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another [AIR 1961 SC 1500], the expression "the date of the award" would mean the date when the award is either communicated to the party or is known by him either actually or constructively. That principle ought to be applied and in view of payment of requisite amount within the period of limitation, the application of the petitioner was required to be considered and decided on merits, rather than being rejected on technical ground of limitation after five years of its pendency, according to the submission. Responding to that, learned AGP submitted that that issue may also be canvassed before the Chief Controlling Revenue Authority and may be decided by that authority, after affording to the petitioner an opportunity of hearing.

7. Therefore, by consent and joint request, the petition is partly allowed with the direction that application dated 12-6-2002 of the petitioner shall be heard and disposed by the Chief Controlling Revenue Authority in accordance with law, after affording to the petitioner an opportunity of being heard. The order and communication dated 16-10-2006 of Deputy Superintendent of Stamps and the Deputy Collector, Stamp Duty Valuation Organization, addressed to the petitioner, as also notice dated 15-1-2007 for recovery of deficit stamp duty shall stand quashed. Rule is made absolute with no order as to costs. Direct service is permitted.

A copy of this order shall be served upon the Chief Secretary of the Government of Gujarat for perusal and, if thought fit, to initiate improvements in the implementation of an important legislation like the Bombay Stamp Act, 1958 and for reducing unnecessary and avoidable litigations.

(D.H.Waghela, J.)

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